

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, HELENA DIVISION

STATE OF MONTANA)	No. V-83-317-HLN-PGH
)	
Plaintiff and)	
Counter Defendant)	
)	
v.)	CONSENT DECREE
)	
ATLANTIC RICHFIELD COMPANY,)	
)	
Defendant and)	
Counterclaimant.)	

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I. INTRODUCTION

A. In this action, commenced on December 12, 1983, the State of Montana ("State") seeks to recover from the Atlantic Richfield Company ("ARCO") natural resource damages pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and the Montana Comprehensive Environmental Cleanup and Responsibility Act ("CECRA"), Mont. Code Ann. § 75-10-715(2)(b).

B. The State alleges that Hazardous and Deleterious Substances (as this term is defined below) have been released into the environment since the 1860s as a result of mining, milling, mineral processing, and related activities centered in Butte and Anaconda, Montana. The State alleges that ARCO is legally responsible for these releases under CERCLA and CECRA by virtue, inter alia, of its own actions and its assumption of the liabilities of its predecessors-in-interest, including the Anaconda Copper Mining Company and the Amalgamated Copper Mining Company. The State further alleges that natural resources have been injured as a result of the release of Hazardous and Deleterious Substances. Natural resources the State alleges are injured include fish, wildlife, surface water, groundwater, soil, and vegetation. As a trustee for natural resources pursuant to CERCLA and CECRA, the State is statutorily authorized to recover natural resource damages.

C. ARCO denies liability and pleads numerous affirmative defenses in response to the State's claims. Through its counterclaims, ARCO alleges that the State is a liable party and seeks CERCLA cost recovery and CERCLA and CECRA contribution. ARCO asserts that even if there is injury to natural resources for which it is liable, that injury will be restored, replaced or equivalent natural resources provided through CERCLA remedial actions or other actions which have been or will be undertaken.

D. The Confederated Salish and Kootenai Tribes of the Flathead Reservation (the "Tribes") filed a motion to intervene in this case on October 17, 1994. By Order dated January 21, 1997, the Court denied the Tribes' application for intervention as a matter of right but granted the Tribes permissive intervention for the limited purpose of prosecuting any natural resource damage claims they have against ARCO which are separate and distinct from the natural resource damage claims advanced by the State. Both the Tribes and ARCO filed motions for reconsideration of the Court's Order regarding intervention. The State opposed these motions for reconsideration and, as of the date of the Parties' Notice of Lodging of this Consent Decree, said motions remain pending.

E. The State contends that it conducted its natural resource damage assessment pursuant to regulations promulgated by the United States Department of the Interior, 43 C.F.R. Part 11. The State's Report of Assessment was issued in January 1995. Additional materials comprising the Report of Assessment were issued in October 1995 and in January 1996. Trial in Montana v. ARCO commenced on March 3, 1997.

F. This Consent Decree provides for a two-step process by which the Parties intend to settle through this Consent Decree all of the State's claims for Natural Resource Damages except for the State's claims for Restoration Damages for the Step 2 Sites and

the State's Assessment and Litigation Costs (as each of these terms is defined below) incurred on or after January 1, 1998 and certain of ARCO's counterclaims.

G. It is understood that the State, by this Consent Decree, does not intend to release, limit, or affect in any way the claims of any other person or entity, including claims for natural resource damages by the Tribes and the United States, whether on its own behalf or as trustee for the Tribes. It is further understood that ARCO, by this Consent Decree, does not intend to limit or affect in any way the prohibition against double recovery in Section 107(f)(1) of CERCLA except as specifically provided in paragraph 25. Other than as just provided or expressly provided elsewhere herein, the State and ARCO agree that this Consent Decree shall not be used by either Party or any third party as evidence or as estoppel in this action or any other action or proceeding, other than an action or proceeding by one of the Parties to enforce the terms of this Consent Decree.

NOW, THEREFORE, THE STATE AND ARCO AGREE AND IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

II. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action and the Parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331 and 1367, and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

2. This Court also has personal jurisdiction over ARCO and the State in this action.

III. APPLICABILITY OF CONSENT DECREE

3. The provisions of this Consent Decree shall apply to and be binding on the Parties to this Consent Decree, their agents and successors. A change in the organizational form, ownership or status of a Party shall have no effect on its obligations under this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or CECRA or in regulations promulgated thereunder shall have the meaning assigned to them in CERCLA or CECRA or in such regulations. Whenever the terms listed below are used in this Consent Decree, the following definition shall apply:

a. “All Sites” means the Upper Clark Fork River Basin above the confluence of the Little Blackfoot River near Garrison (i.e., the main stem of the Clark Fork River and all areas which naturally drain into the Clark Fork River or its tributaries above this confluence near Garrison) and the main stem of the Clark Fork River between the Idaho/Montana border and Garrison, including the Milltown Reservoir, and its riparian zone. “All Sites” includes the areas encompassed within the Four NPL Sites as defined herein.

b. “Assessment and Litigation Costs” means all costs and expenses of whatever nature, including administrative and indirect costs, incurred by the State relating to (1) all phases of its assessment of Natural Resource Damages at All Sites, and (2) Montana v. ARCO, including attorneys fees and costs, expert witness fees and costs, and all other costs of litigation.

c. "Compensable Value Damages" means those sums representing the loss of economic value, including use and nonuse values, incurred by the public as a result of injuries to natural resources. "Compensable Value Damages" does not include "Restoration Damages."

d. "Consent Decree" means this Consent Decree.

e. "Day" means one calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, State of Montana or federal holiday, the period shall run until the close of business (i.e., 5:00 p.m. MT) of the next working day. A period of one (1) year is equal to 365 days.

f. "Effective Date" means the date upon which either this Consent Decree or the SSTOU Consent Decree is entered as a final judgment under Fed. R. Civ. P. 54(b) which includes the expiration of any time for taking an appeal by any person not a Party to this Consent Decree.

g. "Final Effective Date" means the Effective Date of this decree or the Effective Date of the SSTOU Consent Decree, whichever occurs later.

h. "Four NPL Sites" means the areas encompassed within the four Clark Fork River Basin Superfund National Priorities List ("NPL") Sites: Silver Bow Creek/Butte Area Site; Anaconda Smelter Site; Milltown Reservoir/Clark Fork River Site; and Montana Pole and Treating Plant Site.

i. "Hazardous and Deleterious Substances" means, collectively, hazardous substances, as defined by CERCLA, and hazardous or deleterious substances, as defined by CECRA.

j. "Natural Resource Damages" means any damages or other relief recoverable by the State of Montana for injury to, destruction of, or loss of any and all natural resources, including Restoration Damages and Compensable Value Damages, resulting from releases of Hazardous and Deleterious Substances within All Sites. Notwithstanding the above, "Natural Resource Damages" does not include lawful response actions or response costs under CERCLA or CECRA.

k. "Parties" or "Party" means, respectively, the signatories or one of the signatories to this Consent Decree, ARCO and the State of Montana.

l. "Restoration Damages" means those sums which may be recovered to restore, rehabilitate, or replace the injured resources or for the acquisition of equivalent natural resources to substitute for the injured resources. "Restoration Damages" does not include "Compensable Value Damages."

m. "Restoration Determination Plan" means the report prepared by the State as part of its natural resource damage assessment and issued in final form in October 1995 that describes the State's claim for Restoration Damages at various geographic areas in the Upper Clark Fork River Basin.

n. "Settlement Amount" means the \$215 million to be paid by ARCO pursuant to paragraphs 6 and 7, less a credit of \$2 million for the land to be conveyed by ARCO to the State or its designee pursuant to paragraph 9.

o. "SSTOU" means the Streamside Tailings Operable Unit, which is part of the Silver Bow Creek/Butte Area NPL Site.

p. "SSTOU Consent Decree" means the separate Consent Decree pertaining to the SSTOU to be negotiated between the State, the United States, and

ARCO which, if agreed upon, will be separately submitted for public comment. The Parties covenant that the SSTOU Consent Decree will be negotiated in good faith and that time is of the essence.

q. “Step 2 Sites” means the following three (3) geographic areas described in the State’s Restoration Determination Plan and natural resources therein: Area One Groundwater and Surface Water Resources; Smelter Hill Area Upland Resources; and Clark Fork River Aquatic and Riparian Resources.

V. PAYMENTS BY ARCO

5. In consideration for the State’s Release of Claims set forth in paragraphs 20 and 21 and as provided in paragraphs 6 and 7, ARCO shall pay the State the Settlement Amount.

6. Within fifteen (15) days following the Parties' filing of the Notice of Lodging of this Consent Decree, ARCO shall pay \$15 million (\$15,000,000.00) to the State. Upon receipt of ARCO’s \$15 million payment, the State’s release of its claim for Assessment and Litigation Costs incurred by the State through December 31, 1997, as provided in paragraph 20, shall be effective.

7. In addition, ARCO shall pay \$198 million (\$198,000,000.00) to the State, which is the balance of the Settlement Amount, plus interest as calculated in the manner set forth in paragraph 10. Out of this \$198 million, the sum of \$80 million (\$80,000,000.00) and the interest and earnings accruing thereon, shall be designated by the State for future actions and costs to be incurred by the State and the United States at the SSTOU pursuant to the terms of the SSTOU Consent Decree. The \$198 million payment shall be made in three (3) installments. Within thirty (30) days following the

Final Effective Date, ARCO shall pay the sum of \$148 million to the State plus all interest, calculated in the manner set forth in paragraph 10, which has accrued on the unpaid balance of the Settlement Amount as of the date of payment. Out of this amount, \$118 million, and the interest thereon, shall be paid into the fund provided for in paragraph 16, and \$30 million, and the interest thereon, shall be paid into the fund provided for in paragraph 14. Within one (1) year plus thirty (30) days following the Final Effective Date, ARCO shall pay the sum of \$25 million to the State, plus all unpaid interest, calculated in the manner set forth in paragraph 10, which has accrued on the unpaid balance of the Settlement Amount as of the date of payment. Within two (2) years plus thirty (30) days following the Final Effective Date, ARCO shall pay \$25 million to the State, plus all remaining unpaid interest, calculated in the manner set forth in paragraph 10, which has accrued on the unpaid balance of the Settlement Amount as of the date of payment. The last two installment payments, each consisting of \$25 million, plus interest, shall be paid into the fund provided for in paragraph 14.

8. The Parties expressly condition their consent to this Consent Decree and the payment of money and conveyance of property by ARCO pursuant to paragraphs 7 and 9 upon the Court's approval and entry of the SSTOU Consent Decree. However, in the event the SSTOU Consent Decree is not agreed upon among the Parties and the United States, or judicial approval of this Consent Decree or the SSTOU Consent Decree is not obtained and the State does not withdraw or withhold its consent to this Consent Decree pursuant to paragraph 48, the State shall retain the \$15 million payment made pursuant to paragraph 6, and the State's release of its claim for Assessment and Litigation

Costs through December 31, 1997, as provided for in paragraph 20, shall remain in effect and be binding upon the State.

9. Within thirty (30) days following the Final Effective Date or at such later time as the State directs, ARCO shall grant or convey to the State, or the State's designee, title to certain lands located in the SSTOU, said lands having an aggregate value of at least \$2 million, which are presently either owned by or under option to ARCO. Prior to entry of this Consent Decree, the Parties shall agree upon the specific parcels of land to be conveyed and the form of instrument for such conveyances. As directed by the State, ARCO shall place deed restrictions upon the lands it conveys to the State or its designee. In consideration of this conveyance, ARCO will receive a credit of \$2 million, and no more than that, toward payment of the Settlement Amount. The credit to be received by ARCO for such conveyance shall be calculated as the actual amount ARCO paid for the lands it conveys to the State or its designee, including option payments that were applied to the purchase price and brokerage fees and commissions, except for those lands which have been held by ARCO for more than 20 years for which ARCO's credit shall be their estimated fair market value as of April 6, 1998. ARCO represents that it holds marketable title to said lands, and that the value, based on the aforesaid criteria, of ARCO's interest in such lands is at least \$2 million. It is based upon this representation, that the State has agreed that ARCO shall receive said \$2 million credit against the Settlement Amount. The State, after examining the condition of title to said lands and ARCO's records regarding their purchase and valuation, may dispute: (1) ARCO's representation that it holds marketable title; and/or (2) ARCO's calculation of the credit to which it is entitled for any parcel of land to be conveyed. Such a dispute and any other dispute which arises as a

result of the provisions of this paragraph may be taken, by either Party, to the Court for dispute resolution under the provisions of paragraphs 31 and 32. If the Court determines that the credit ARCO is entitled to under the aforesaid criteria is less than \$2 million, ARCO shall pay the State the difference between the \$2 million and the dollar value of the credit determined by the Court, plus the interest on said difference, calculated in the manner set forth in paragraph 10, which would have accrued on that amount from April 6, 1998, until the date of payment. ARCO releases all claims and causes of action against the State and its agencies, instrumentalities, officials, employees, and agents and the State's designees, and the assignees of the State and its designees, which arise from ownership of said lands and the existence of Hazardous and Deleterious Substances which were present upon, about or beneath said lands as of the date of the conveyance by ARCO, or the migration of said Hazardous and Deleterious Substances, or Hazardous and Deleterious Substances on upstream or adjacent lands as of the date of conveyance, to, on, or from said lands after the date of conveyance. Notwithstanding the release set forth in the immediately preceding sentence, ARCO reserves any claims and causes of action which may arise against the State and its designees related to any active disposal of Hazardous and Deleterious Substances not related in any way to implementation of actions taken pursuant to, or with funds obtained under, this Consent Decree or the SSTOU Consent Decree, upon said lands after the date of conveyance, but only to the extent such new disposal causes ARCO to incur costs.

10. Interest upon the unpaid balance of the Settlement Amount to be paid by ARCO as provided in this section shall be calculated from and including April 6, 1998,

through and including the date each payment is received by the State, at a rate equal to the interest yield on the State's Trust Funds Bond Pool (TFBP) managed by the Montana Board of Investments. This interest shall be calculated and compounded on a monthly basis. The interest rate for each month shall be calculated by dividing the interest distribution per share on the TFBP (monthly dividend per share) by the share price (unit price) for the TFBP at the end of that month. Interest for periods of less than a full month shall be calculated based upon the ratio of the number of days during which interest is accruing over the number of calendar days in the particular month. Following the last day of the month during which this Consent Decree is lodged with the Court, the State shall provide ARCO its calculation of the interest rate and interest owed from April 6, 1998, through the month of lodging for ARCO's review and concurrence in the calculation's mathematical accuracy and consistency with the terms of this Consent Decree. Following the last day of the month for each month thereafter until the Settlement Amount plus the interest owed is paid in full by ARCO, the State shall provide ARCO its calculation of the interest rate for the preceding month and accrued interest owed through such month for ARCO's review and concurrence in the calculation's mathematical accuracy and consistency with the terms of this Consent Decree. The payment of each installment of the Settlement Amount shall include all interest then accrued on the Settlement Amount, calculated as provided above through the end of the month immediately preceding the date of payment plus the partial month's interest accrued through the date of payment, calculated using the interest rate used for the immediately preceding month. Interest on the unpaid portion of the Settlement Amount (i.e., any subsequent installments) for the remainder of that month shall be at the regular monthly rate calculated as initially

described above. In the event a dispute arises between ARCO and the State over the amount of interest owed, such dispute shall not delay ARCO's payment of the Settlement Amount owed and any amount of interest owed on that amount which ARCO does not dispute. Any dispute over interest owed by ARCO shall be subject to dispute resolution under paragraphs 31 and 32. In the event judicial approval and entry of this Consent Decree or the SSTOU Consent Decree is not obtained, no interest shall be owing or paid by ARCO on the Settlement Amount.

VI. SETTLEMENT ACCOUNTS

11. All payments made by ARCO pursuant to Sections V and VI of this Consent Decree shall be made by electronic funds transfer to US Bank, Helena Branch, Bank Routing No. 092900383, Account 156041200221, specifying in the addendum, third party record, or similar information field "DOJ/NRDLP Settlement Payment." ARCO shall contact the Administrator of the Central Services Division of the Montana Department of Justice at least 48 hours prior to initiating the transfer to provide notice of the date, time, and amount of the expected transfer and to confirm the wiring instructions, bank routing, and account numbers.

12. The payment by ARCO of \$15 million as set forth in paragraph 6 shall be paid to the State by deposit into a State special revenue fund, as provided for in Mont. Code Ann. §17-2-102(1)(a)(ii)(A), to be known as the "Upper Clark Fork River Basin Assessment and Litigation Cost Recovery Fund," or "UCFRB Assessment and Litigation Cost Recovery Fund," which shall be held and maintained by the State in accordance with the requirements of this Consent Decree. All interest and earnings on said fund shall be paid into that fund for use in accordance with the terms of this Consent Decree, and no

portion of the \$15 million or any earnings thereon is to be treated as a general revenue source or as State General Fund money, nor is any portion to be converted or transferred to the State General Fund except as may be necessary for reimbursement purposes as provided in paragraph 13.

13. Monies paid into the UCFRB Assessment and Litigation Cost Recovery Fund account shall be used by the State to reimburse various entities and accounts of the State which financed the costs of the natural resource damage assessment and the Montana v. ARCO litigation as provided by Chapter 154, 1997 Mont. Laws. Any monies remaining in the account after such reimbursement shall be transferred to the fund established by paragraph 16.

14. The \$80 million and interest thereon, which is to be paid by ARCO in three (3) installments pursuant to paragraph 7 and designated for future actions and costs to be incurred by the State and the United States at the SSTOU, shall be deposited to a State special revenue fund, as provided for in Mont. Code Ann. §17-2-102(1)(a)(ii)(A), to be known as the "Streamside Tailings Operable Unit Fund" or "SSTOU Fund," which shall be held and maintained by the State in accordance with the requirements of this Consent Decree and the SSTOU Consent Decree. All interest and earnings on the SSTOU Fund shall be paid into the SSTOU Fund for use in accordance with the terms of this Consent Decree and the SSTOU Consent Decree. No portion of the \$80 million or any earnings thereon is to be treated as a general revenue source or as State General Fund money, nor is any portion to be converted or transferred to the State General Fund.

15. Payments made to the SSTOU Fund, and the net earnings thereon, shall be used for future actions and costs to be incurred by the State or the United States at the

SSTOU as provided in the SSTOU Consent Decree. Any portion of the \$80 million and the net earnings on that amount not required under the terms of the SSTOU Consent Decree for future State and United States actions and costs, including future operation and maintenance costs and costs related to performance of five year reviews, at the SSTOU, shall be transferred to the account established by paragraph 16. The State shall provide quarterly statements to the United States and ARCO reporting on the funds received into and disbursed from the SSTOU Fund. The quarterly statement shall include task descriptions for funded work, a description of completed tasks and work in progress, administrative fees and expenses, and the balance in the account as of the date of the statement. The quarterly statements should also specify the interest rate, interest earnings and the time period during which interest was earned. ARCO shall have no right to contest or object to the State's quarterly reports or descriptions of such disbursements or expenditures set forth therein.

16. The amount of \$118 million (\$118,000,000.00) and interest thereon, from the first installment payment to be made by ARCO pursuant to paragraph 7, shall be deposited to a State special revenue fund, as provided for in Mont. Code Ann. §17-2-102(1)(a)(ii)(A), to be known as the "Upper Clark Fork River Basin Restoration Fund" or "UCFRB Restoration Fund," which shall be held and maintained by the State in accordance with the requirements of this Consent Decree. The interest, including compound interest thereon, which accrues on the \$15 million to be paid to the State pursuant to paragraph 6 from April 6, 1998, shall be deposited into the UCFRB Assessment and Litigation Cost Recovery Fund as part of the first such installment payment. All interest and earnings on the UCFRB Restoration Fund shall be paid into the

UCFRB Restoration Fund for use in accordance with the terms of this Consent Decree. No portion of the amounts deposited in the UCFRB Restoration Fund, or any earnings thereon, is to be treated as State General Fund money, nor is any portion to be converted or transferred to the State General Fund.

17. Out of the \$118 million referred to in paragraph 16, \$10 million and the earnings accruing on this amount, shall be held in reserve by the State in such fund for any State share of any cost overruns for future actions provided for in the SSTOU Consent Decree. All or any unused part of such reserve may be utilized for the purposes set forth in paragraph 18 when the State determines that such reserve, or any portion thereof, will not be required for any State share of any such cost overruns.

18. Payments made to the UCFRB Restoration Fund and the earnings thereon shall be available for use only to restore, rehabilitate, replace or acquire the equivalent of the injured natural resources. Out of this fund, at least \$3,200,000 shall be utilized by the State's Department of Fish, Wildlife and Parks to restore or replace wetland habitat within All Sites above Milltown Reservoir or to make riparian enhancements to or along the Upper Clark Fork River, or its tributaries, above its confluence with the Blackfoot River. Use and management of the UCFRB Restoration Fund shall comply with all applicable law, including CERCLA, CECRA, and any implementing regulations thereunder.

19. The State shall bear any and all risk of loss of any and all funds in the accounts established by paragraphs 12, 14, and 16 resulting from any decrease in the corpus of the investment funds or fluctuations in the rate of return on the investment of such funds. Costs incurred by the State for administration of the accounts established by paragraphs 12, 14, and 16 shall be borne by the State out of said accounts and shall not be

recoverable as response costs or as part of the State's claim against ARCO for the Step 2 Sites or Assessment and Litigation Costs incurred on or after January 1, 1998.

VII. RELEASE AND RESERVATION OF RIGHTS BY THE STATE

20. Effective upon receipt of the \$15 million payment required pursuant to paragraph 6, the State hereby releases all of its claims and causes of action against ARCO, its divisions, subsidiaries, and any predecessors and successors in interest, and their officers, attorneys, directors, shareholders and employees, for Assessment and Litigation Costs incurred through December 31, 1997. Except as provided in paragraph 48, the State's release of its claims for Assessment and Litigation Costs incurred through December 31, 1997 shall remain in force and shall be binding upon the State in the event the Court does not approve this Consent Decree or the SSTOU Consent Decree.

21. Except as provided in paragraph 22, and effective upon the State's receipt of \$118 million as part of the \$148 million payment pursuant to paragraph 7, the State hereby releases all of its claims and causes of action against ARCO, its divisions, subsidiaries, and any predecessors and successors in interest, and their officers, attorneys, directors, shareholders and employees for Natural Resource Damages arising from past, present or future releases or discharges of Hazardous and Deleterious Substances as a result of the following activities and operations conducted within All Sites: mining, milling, mineral processing and wood treating and related activities and operations, including but not limited to power generation, logging, railroads and other transportation operations. This release does not apply to any such activities or operations conducted by ARCO, or any of its divisions, subsidiaries or agents, after June 15, 1998.

22. The releases set forth in paragraphs 20 and 21 do not apply to any matters other than those specified therein. The State specifically reserves, and this Consent Decree is without prejudice to the State's reservation of rights against ARCO with respect to all such other matters, including but not limited to the following:

- a. Actions to enforce the terms of this Consent Decree;
- b. Claims and causes of action for Natural Resource Damages within All Sites, or any portion thereof, arising from injuries to natural resources caused by unanticipated, extraordinary events occurring after the lodging of this Consent Decree, such as the catastrophic failure of the Warm Springs Ponds Dam or the Milltown Dam, which result in the release of substantial additional quantities of Hazardous and Deleterious Substances. The State has asserted as part of its claims in this action that there are continuing releases and re-releases within All Sites not resulting from unanticipated, extraordinary events, and the State agrees that such continuing releases and their alleged effects are not separately or combined unanticipated, or extraordinary;
- c. Claims and causes of action for Assessment and Litigation Costs incurred by the State on or after January 1, 1998;
- d. Claims and causes of action for Restoration Damages for the Step 2 Sites;
- e. Claims and causes of action for response costs incurred or to be incurred by the State within All Sites;

- f. Claims and causes of action for injunctive relief or administrative order enforcement, other than Natural Resource Damages, under CERCLA or CECRA within All Sites;
- g. Statutory or common law claims and causes of action seeking relief, other than Natural Resource Damages, within All Sites; and
- h. Criminal liability.

VIII. RELEASE AND RESERVATION OF RIGHTS BY ARCO

23. Effective upon the State's receipt of \$118 million as part of the \$148 million payment pursuant to paragraph 7, and except as provided in paragraph 24, ARCO releases all of its counterclaims, defenses and other claims against the State, its agencies and instrumentalities, officials, employees and attorneys relating to All Sites, or any portion thereof, which have been asserted in Montana v. ARCO, and any other counterclaims, defenses or other claims arising from CERCLA or any other law, including common law, pertaining to Natural Resource Damages, response costs or any damages or relief under CERCLA or CECRA which could have been asserted in Montana v. ARCO. The claims described above being released by ARCO include any such claims that it has a right to recover over against the State through an action for contribution, indemnity, or under any other legal theory as a result of a recovery by any other entity of natural resource damages, response costs or any other damages or relief under CERCLA or CECRA against ARCO. Counterclaims and claims for past and future response costs incurred by ARCO are released except to the extent such claims are reserved under paragraph 24.

24. ARCO's release set forth in paragraph 23 is without prejudice to ARCO's reservation of its right:

a. To assert against the State's claims for Restoration Damages for the Step 2 Sites or against the State's claim for Assessment and Litigation Costs incurred on or after January 1, 1998, those counterclaims, defenses and other claims that ARCO has asserted in Montana v. ARCO to the extent they relate to the Step 2 Sites. To the extent that ARCO's counterclaims set forth in paragraph 36, 50 and 52 and affirmative defenses 28, 29, 30, 31 and 39 of ARCO's Second Amended Answer to Second Amended Complaint and Second Amended Counterclaim do not relate to the Step 2 Sites, ARCO shall no longer assert the portion, if any, of said counterclaims and affirmative defenses not relating to the Step 2 Sites. For purposes of the preceding sentence, the Parties agree that said counterclaims and defenses do not relate to the Step 2 Sites to the extent they relate to actions taken or funded by ARCO, or its predecessors-in-interest, outside of the Step 2 Sites, the Warm Springs Ponds Inactive and Active Area Operable Units, and land areas in Butte which are within one mile of Area One Groundwater and Surface Water Resources. The States' agreement for purposes of this subparagraph is without waiver of any evidentiary objections it may have at trial or defenses to ARCO's counterclaims and defenses relating to the Step 2 Sites;

b. To assert in this action as pled ARCO's counterclaim for response costs for any Milltown Reservoir removal or remedial actions;

c. To assert in this action as pled ARCO's counterclaim for response costs for any additional work required by modification of the now existing Warm

Springs Ponds RODs (i.e., Inactive Area and Active Area operable units) but not for its response costs for the Warm Springs Ponds under the now existing RODs, including its past costs and future operation and maintenance requirements;

d. To assert in this action as pled ARCO's counterclaim for response costs based upon ARCO's contention that the State bears CERCLA liability as a result of its past involvement with Section 36, Township 5 North, Range 10 West; and

e. To assert against the State any counterclaim, defense or claim that is not reserved above and that arises out of a new liability, pertaining to All Sites or a portion thereof, and only to the extent of such new liability, imposed upon ARCO after June 15, 1998 as a result of: (1) New Regulatory Action; (2) the initiation of a suit by the State after June 15, 1998 based upon any future cause of action reserved by the State in subparagraphs 22 (b), (e), (f) and (g) above; or (3) the recovery by the United States of damages or other relief under CERCLA pursuant to a claim not asserted prior to June 15, 1998. For purposes of the preceding sentence, the United States' claims for response costs incurred or to be incurred in the future, including costs for removal actions, for the Butte Area portion of the Silver Bow Creek/Butte Area NPL Site and claims for natural resource damages for the Grant Kohrs Ranch and the fifteen tracts of BLM land described in paragraph 25 shall be deemed to have been asserted prior to June 15, 1998. For purposes of this subparagraph, ARCO's reservation of counterclaims and other claims for response costs shall include only those response costs arising from any New Regulatory Action. Notwithstanding this reservation of its rights,

ARCO agrees it shall not assert counterclaims or other claims for response costs against any action reserved by the State pursuant to subparagraph 22(g) above which does not seek any relief for environmental conditions within All Sites. As used in this subparagraph, “New Regulatory Action” means liability arising from: (a) the issuance of a new administrative order or record of decision (“ROD”) except for any removal order for an operable unit or portion thereof within the Butte Area portion of the Silver Bow Creek/Butte Area NPL Site which precedes the first ROD for such operable unit or for any first ROD and corresponding orders or decrees for each of the following operable units: the Anaconda Regional Water, Waste and Soils, Butte Priority Soils, Butte Non-Priority Soils, Milltown Reservoir and Clark Fork River; (b) any amendment or other substantial modification of a ROD issued prior to June 15, 1998 or of any first ROD for the above-referenced operable units; or (c) any substantial modification or amendment of an existing administrative order or consent decree or triggering of any consent decree reopener any of which requires substantial additional response actions or response actions substantially beyond the scope of the remedy selected in an existing ROD or any first ROD for the above-referenced operable units and payments by ARCO for such response actions other than for the SSTOU and the Warm Springs Ponds (Inactive and Active Area operable units).

Notwithstanding the above, ARCO’s right to recover over against the State under any counterclaim or other claim it is reserving above, except a claim for contribution to the extent reserved under this subparagraph (e), in this or in any future action pertaining to the Four NPL Sites, shall be limited to a setoff against any recovery by the State.

Furthermore, the counterclaims reserved in subparagraphs (a),(b), (c), and (d) above may only be asserted in any Step 2 Site litigation which may later occur in this action, as provided in Section X, hereof, and may not be asserted in any other action; however, the legal and factual bases for such counterclaims, but not response costs which do not arise from New Regulatory Action, may be asserted by ARCO through counterclaims, defenses and other claims reserved under subparagraph (e) above.

IX. CONTRIBUTION PROTECTION AND THIRD PARTIES

25. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as expressly provided herein, each Party expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the release or threatened release of a Hazardous and Deleterious Substance within or into All Sites against any person not a Party hereto. Notwithstanding this reservation of rights, ARCO will not assert the bar to double recovery, set forth in section 107(f)(1) of CERCLA, based upon this Consent Decree or the SSTOU Consent Decree in any action brought by: (1) the United States or the Tribes seeking natural resource damages arising from alleged injuries in and along the main stem of the Clark Fork River, or its riparian zone, between the Idaho/Montana border and the base of the Milltown Dam; (2) the United States seeking natural resource damages arising from alleged injuries to natural resources on or within United States' owned lands located above the ordinary high water mark of the Upper Clark Fork River which are administered by the National Park Service at the Grant-Kohrs Ranch or by the Bureau of Land Management along or

near the Upper Clark Fork River at the fifteen (15) tracts specifically described in the August 18, 1995 report, "Preliminary Characterization of Soil Metal Concentrations on BLM Lands, Clark Fork River, Montana," by P. Mayer, K. Ford, R. Bump and P. Bierbach.

26. To the extent provided by Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), and any other applicable statute or other law, ARCO shall not be liable for claims for contribution for all matters addressed by the settlement embodied in this Consent Decree. For purposes of this paragraph, the matters addressed by this settlement are the claims and causes of action being released by the State pursuant to paragraphs 20 and 21 above.

X. STAY OF TRIAL AND THE STEP 2 SITES

27. As of the date of the lodging of this Consent Decree with the Court, the Parties stipulate to a stay of the trial of Montana v. ARCO. The Court hereby orders that said trial shall be stayed provided that the Parties shall file their proposed findings and conclusions for the groundwater resource injury segment of the case on the schedule ordered by the Court. In the event that this Consent Decree is not approved and entered by the Court, or the State withdraws its consent as provided for under paragraph 48, the Parties shall stipulate to a resumption of the trial of Montana v. ARCO in accordance with a schedule ordered by the Court.

28. As of the date of lodging of this Consent Decree, Records of Decision ("ROD") setting forth the selected CERCLA remedial action have not been issued for any one of the three Step 2 Sites. Upon each issuance of a ROD setting forth the CERCLA remedial action for the geographic area encompassed by, in whole or in part, a Step 2 Site,

a sixty (60) day period shall commence during which the State and ARCO will attempt to reach a negotiated settlement of the State's remaining Restoration Damages claims, the State's remaining claims for Assessment and Litigation Costs, reserved pursuant to subparagraphs 22(c) and (d), and ARCO's remaining counterclaims, defenses and other claims reserved pursuant to subparagraph 24(a) associated with such Step 2 Site.

29. In the event a settlement of the claims associated with a Step 2 Site is not reached during the sixty (60) day period provided for under paragraph 28, ARCO and the State may agree to extend the period for negotiation of a settlement and provide the Court notice of such extension. In the event a settlement of such claims is not reached during the sixty (60) day period provided for under paragraph 28, and ARCO and the State do not agree to extend the period of negotiations, the Parties shall submit a notice of their inability to settle to the Court. Upon receipt of such notice, the Court shall reconvene trial of the State's claims and ARCO's counterclaims associated with such Step 2 Site on a schedule set by the Court. At any time prior to reconvening the trial, the State or ARCO may file a motion with the Court requesting a continuation of the stay of the trial on any grounds other than the fact that a ROD has not been issued for other Upper Clark Fork River basin operable units.

30. Following settlement or trial of the State's claims for Restoration Damages for all of the Step 2 Sites, the Parties shall attempt to reach a negotiated settlement of any remaining State claim for Assessment and Litigation Costs incurred on or after January 1, 1998. If the Parties cannot settle and resolve that claim, then trial shall reconvene on that claim and any other necessarily related issues on a schedule to be determined by the Court.

XI. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

31. This Court retains jurisdiction for the purpose of interpreting and enforcing the terms of this Consent Decree, reviewing any proposed modifications, hearing and determining any claims that are not settled and resolved pursuant to Section X, hereof, and resolving any disputes to the extent provided for in paragraph 32.

32. In the event a dispute should arise between ARCO and the State regarding the interpretation or implementation of the terms of this Consent Decree, the Parties shall make a good faith effort to resolve the dispute prior to invoking the continuing jurisdiction of the Court. Prior to invoking the Court's jurisdiction to resolve a dispute, a Party shall deliver to the other Party a written statement detailing the matters in dispute and proposing terms to resolve the dispute. Except where the Party seeking to invoke the Court's jurisdiction can demonstrate a significant need for a more prompt resolution, such statement of the dispute must be delivered to the other Party at least fifteen (15) days prior to filing any motion or application for relief from the Court.

XII. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one Party to the other, it shall be sent via facsimile and U.S. mail directed to the Parties' representatives at the addresses specified below, unless those representatives or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt by at least one representative of the receiving Party.

As to the State:

Joseph P. Mazurek
Attorney General
Robert G. Collins

Montana Department of Justice
Natural Resource Damage Litigation Program
Old Livestock Building

Candace F. West	1310 East Lockey Avenue
Charles E. Magraw	P.O. Box 201425
Robert M. Gentry	Helena, MT 59620-1425
Assistant Attorneys General	(406) 444-0205
	(406) 444-0236 (fax)

As to ARCO:

Ronald C. Redcay	ARCO
Deputy General Counsel	444 South Flower Street, 35th Floor
	Los Angeles, CA 90071
	(213) 486-1997
	(213) 486-3978 (fax)

Sandra M. Stash, P.E.	ARCO Environmental Remediation, L.L.C.
Vice President, Environmental	307 East Park Street, Suite 400
Affairs	Anaconda, MT 59711
	(406) 563-5211
	(406) 563-8269 (fax)

XIII. GENERAL PROVISIONS

34. The State's Second Amended Complaint states claims upon which relief may be granted.

35. The settlement between the Parties, embodied in this Consent Decree is intended to resolve only the matters set forth herein. This Consent Decree shall not constitute an admission of any fact or any violation of treaty, federal, State or common law, or an admission of any liability of one Party to the other Party or to any third party except in litigation to enforce the terms of this agreement.

36. Nothing in this Consent Decree shall be construed to require any governmental entity to spend funds not appropriated for or allocated to obligations under this Consent Decree.

37. The Consent Decree may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

38. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

39. The payments and conveyance of property to be made by ARCO, hereunder, are not and do not constitute penalties, fines or monetary sanctions of any kind.

40. In any subsequent administrative or judicial proceeding initiated by the State for injunctive relief or recovery of response costs pertaining to the Four NPL Sites, ARCO shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue-preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the releases by the State set forth in Section VII of this Consent Decree.

41. The State and ARCO recognize, and the Court in entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that the implementation of this Consent Decree and the related SSTOU Consent Decree will expedite the clean up and restoration of natural resources at the sites involved in this matter, avoid prolonged and complicated litigation between the Parties and that this Consent Decree is fair, reasonable, consistent with CERCLA and CECRA and the regulations promulgated thereunder, and is in the public interest.

XIV. INTEGRATION AND MODIFICATION

42. Upon the Court's approval of this Consent Decree and the SSTOU Consent Decree, this Consent Decree shall be entered as a final judgment under Fed. R. Civ. P. 54(b). The Court expressly determines that there is no just reason for delay in entering this judgment. Upon ARCO's payment of the Settlement Amount, including the conveyance of property pursuant to Section V, and of all interest owed, the State shall file a satisfaction of judgment with the Court pursuant to applicable law.

43. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied herein.

44. The terms of this Consent Decree may be modified only by a subsequent written agreement by the Parties that is jointly submitted to and approved by the Court.

**XV. LODGING OF CONSENT DECREE AND OPPORTUNITY FOR
PUBLIC COMMENT**

45. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment consistent with the procedures in Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. Within 45 days from the last day allowed for public comment on this Consent Decree, the State shall file with the Court a memorandum summarizing the public comments received and the State's responses thereto, together with a statement indicating whether, in light of such public comment, the State recommends Court approval of this Consent Decree or whether the State is exercising its right under paragraph 48 to withdraw from this Consent Decree.

46. ARCO agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree in the form submitted to the Court.

47. If a SSTOU Consent Decree is not agreed upon among the Parties and the United States and submitted to the Court within 120 days of the lodging of this Consent Decree or within any extension of the 120-day deadline, or if for any reason the Court should decline to approve and enter this Consent Decree or the SSTOU Consent Decree in the form presented, this Consent Decree shall be null and void. The Parties may extend this 120-day deadline for the lodging of the SSTOU Consent Decree by filing a joint notice of their intent to do so with the Court; or, if an agreement cannot be reached to extend this deadline, either party may request the Special Master in this case to extend the deadline and he may do so if there is good cause therefor. Notwithstanding the above, if a SSTOU Consent Decree is not agreed upon, or if the Court should decline to approve this Consent Decree or the SSTOU Consent Decree, the State shall retain the \$15 million payment required pursuant to paragraph 6 and the State's release of claims pursuant to paragraph 20 shall remain in force and be binding upon the State.

48. The State reserves the right to withdraw its consent to this Consent Decree if public comments received by the State disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. If the State withdraws its consent to this Consent Decree, this decree shall be void as of the date written notice of such is provided to the Court and ARCO. Within fifteen (15) days following written notice that it has withdrawn its consent, the State shall refund to ARCO the \$15 million payment made pursuant to paragraph 6, together with the net earnings thereon, from the date of receipt by the State until and including the date of repayment to ARCO. In the event of any such refund, the release of claims and causes of action provided for in paragraph 20 shall also be void.

XVI. EFFECTIVE DATE

49. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree, is entered as a final judgment under Fed. R. Civ. P. 54(b) which includes the expiration of any time for taking an appeal by any person not a Party to this Consent Decree. As between the State and ARCO, this Consent Decree shall be final and binding upon approval and entry by the Court and may not be appealed by either Party.

XVII. SIGNATORIES

50. The undersigned representative of ARCO and the undersigned representative of the State each certify that he is fully authorized to enter into, execute and legally bind such Party to this Consent Decree.

SO ORDERED this _____ day of _____, 1998.

PAUL G. HATFIELD, Senior Judge
United States District Court

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
State of Montana v. Atlantic Richfield Company.

FOR THE STATE OF MONTANA

Dated: _____

Marc Racicot, Governor

Dated: _____

Joseph Mazurek, Attorney General

Dated: _____

Robert Collins
Counsel of Record for the State

FOR ATLANTIC RICHFIELD COMPANY

Dated: _____

Mike R. Bowlin
Chairman and Chief Executive Officer

Dated: _____

Ronald C. Redcay
Deputy General Counsel

Dated: _____

Stephen H. Foster
Counsel of Record for ARCO

Joseph P. Mazurek
Attorney General
Robert G. Collins
Candace F. West
Charles E. Magraw
Robert M. Gentry
Assistant Attorneys General
Montana Department of Justice
Natural Resource Damage
Litigation Program
Old Livestock Building
1310 East Lockey Avenue
P.O. Box 201425
Helena, MT 59620-1425
(406) 444-0205

Kevin M. Ward
Special Assistant Attorney General
Harding Shultz & Downs
1200 17th Street, Suite 1950
Denver, CO 80202-3357

**COUNSEL FOR PLAINTIFF AND
COUNTERCLAIM DEFENDANT**

Holland & Hart LLP
401 North 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
(406) 252-2166

Richard O. Curley, Jr.
Arnold & Porter
1700 Lincoln Street, Suite 4000
Denver, CO 80203
(303) 863-1000

Robert W. Lawrence
William J. Duffy
Parcel, Mauro & Spaanstra, P.C.
1801 California Street, Suite 3600
Denver, CO 80202
(303) 292-6400

**COUNSEL FOR DEFENDANT
AND COUNTERCLAIMANT**

Stephen H. Foster
